

John Paff
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Pompano Beach, FL 33069-4457

May 9, 2016

Office of the Commissioner
Department of Community Affairs
P.O. Box 800
Trenton, NJ 08625-0800

RE: Petition for Rulemaking

Dear Sir or Madam:

Enclosed please find a Petition for Rulemaking submitted in accordance with N.J.A.C. 5:2-2.2.

Thank you for your attention to this matter.

Very truly yours,

John Paff

**PETITION FOR RULEMAKING
TO THE DEPARTMENT OF COMMUNITY AFFAIRS**

1. The full name and address of the petitioner;

New Jersey Libertarian Party's Open Government Advocacy Project
c/o John Paff, Chairman
2106 S Cypress Bend Dr Apt 102
Pompano Beach, FL 33069

2. The substance or nature of the rulemaking that is requested;

Adoption of a rule that would define which types of local government employees, contractors and appointees are managerial executive employees of a local government agency.

3. The reasons for the request;

Prior to August 10, 2015, when L.2015, c. 95 § 21 (which amended N.J.S.A. 40A:9-22.3(g)) went into effect, questions regarding which local government employees were "managerial executive" employees (and thus "Local Government Officers" required to file Financial Disclosure Statements) were decided by local officials who were often guided by Attorney General agency advice letters.

L.2015, c. 95 § 21, however, amended N.J.S.A. 40A:9-22.3(g) to state:

"Local government officer" means any person whether compensated or not, whether part-time or full-time: (1) elected to any office of a local government agency; (2) serving on a local government agency which has the authority to enact ordinances, approve development applications or grant zoning variances; (3) who is a member of an independent municipal, county or regional authority; or (4) who is a managerial executive employee of a local government agency, **as defined in rules and regulations adopted by the Director of the Division of Local Government Services in the Department of Community Affairs pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.),** but shall not mean any employee of a school district or member of a school board; (Emphasis supplied.)

The Sponsor's Statement to S-2454 (the bill which led to the August 10, 2015 amendment to N.J.S.A. 40A:9-22.3(g)) states:

Currently, [determinations of who is a managerial executive employee for purposes of the "Local Government Ethics Law"] are subject to legal interpretation, which creates confusion among local governments. Authorizing

DLGS to make these determinations would provide greater clarity and consistency in this process.

Petitioner asserts that promulgating a rule that defines which local government employees, appointees and contractors are managerial executive employees is a priority and that many local government employees, appointees and contractors who have for a long time been universally regarded as Local Government Officers will no longer be considered such by virtue of the August 10, 2015 statutory amendment coupled with the fact that the DLGS has yet to promulgate a rule authorized by current version of N.J.S.A. 40A:9-22.3(g).

For example, municipal attorneys have been universally considered Local Government Officers at least since Attorney General agency advice letter 91-0092 was issued on September 20, 1991. That letter opined that municipal attorneys are Local Government Officers only because they fit into the pre-amendment, "fourth and last category of 'local government officer' [who] is a person 'who is a managerial executive or confidential employee of a local government agency, as defined in section 3 of the 'New Jersey Employer-Employee Relations Act.' P.L. 1941, c. 100 . . . ' N.J.S.A. 40A:9-22.3(g)(4). "

After August 10, 2015, however, no class of local government employee, appointee or contractor is or will be a "Local Government Officer" under the "fourth and last category" of N.J.S.A. 40A:9-22.3(g) unless and until a rule is promulgated that defines them as such. In sum, absent a rule, the "fourth and last category" defines no one. Municipal attorneys and others who have for decades filed FDS forms may--after August 10, 2015-- lawfully decline to file them because they are no longer considered Local Government Officers under the statute. The only way to require these officials to file FDS statements is for the Director of the Division of Local Government Services to exercise the rulemaking authority conferred by the amended statute.

4. The petitioner's interest in the request, including, without limitation, any relevant organizational affiliation or economic interest; and

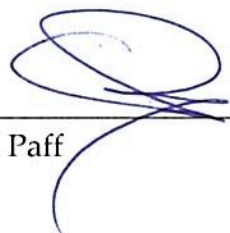
The New Jersey Libertarian Party's Open Government Advocacy Project seeks to maximize the amount of information available to citizens from government agencies. We believe that public FDS filings by local governmental managerial executive employees helps citizens and taxpayers better fulfill their vital role in monitoring government and seeking redress for governmental excesses and abuses.

Petitioner has no economic interest in the outcome of this petition.

5. The statutory authority under which the Department may take the requested action.

N.J.S.A. 40A:9-22.3(g).

May 9, 2016



John Paff